

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DAVID G. PEREZ	:	CIVIL ACTION
	:	
v.	:	
	:	
GERALD JACKSON	:	No. 99-2874

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DAVID G. PEREZ	:	CIVIL ACTION
	:	
v.	:	
	:	
WILLIAM YOUNG	:	No. 99-2876

M E M O R A N D U M

WALDMAN, J.

November 28, 2001

I. Introduction

Plaintiff has asserted claims under 42 U.S.C. § 1983 in these consolidated actions against defendants Young and Jackson for violation of his Eighth Amendment rights. At all times relevant to this lawsuit, plaintiff was an inmate at the Pennsylvania State Correctional Institution at Chester ("SCI Chester") where defendant Young was a corrections officer and defendant Jackson was a sergeant.

These cases arise from defendants' transport of plaintiff from SCI Chester to a doctor's office in Norristown on March 9, 1999. Plaintiff alleges that during the transport, the officers used hand-cuffs on his wrists with knowledge that plaintiff suffered from wrist pain.

Presently before the court is defendants' motion for summary judgment to which plaintiff has not responded.

## **II. Legal Standard**

In considering a motion for summary judgment, the court must determine whether "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986); Arnold Pontiac-GMC, Inc. v. General Motors Corp., 786 F.2d 564, 568 (3d Cir. 1986). Only facts that may affect the outcome of a case are "material." Anderson, 477 U.S. at 248. All reasonable inferences from the record are drawn in favor of the non-movant. See id. at 256.

Although the movant has the initial burden of demonstrating the absence of genuine issues of material fact, the non-movant must then establish the existence of each element on which it bears the burden of proof. See J.F. Feeser, Inc. v. Serv-A-Portion, Inc., 909 F.2d 1524, 1531 (3d Cir. 1990) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)), cert. denied, 499 U.S. 921 (1991). A plaintiff cannot avert summary judgment with speculation or by resting on the allegations in his pleadings, but rather must present competent evidence from which a jury could reasonably find in his favor. Anderson, 477 U.S. at

248; Ridgewood Bd. Of Educ. v. N.E. for M.E., 172 F.3d 238, 252 (3d Cir. 1999); Williams v. Borough of West Chester, 891 F.2d 458, 460 (3d Cir. 1989); Woods v. Bentsen, 889 F. Supp. 179, 184 (E.D. Pa. 1995).

### **III. Facts**

From the competent evidence of record, as uncontroverted or otherwise taken in the light most favorable to plaintiff, the pertinent facts are as follows.

Plaintiff is serving a sentence for selling drugs imposed in 1996. After a period of incarceration at SCI Somerset, plaintiff was transferred to SCI Chester in May of 1998. Plaintiff has suffered from symptoms of carpal tunnel syndrome for at least several years, including pain, burning, numbness and tingling in his wrists.<sup>1</sup> While incarcerated, plaintiff has often had wrist pain and was seen by medical personnel regularly. He has periodically been issued plastic wrist splints and prescribed Tylenol.

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<sup>1</sup> In his deposition, plaintiff states that the pain in his wrists dates back eleven years to 1990. A physician's report indicates that plaintiff claimed the pain began in 1984. In a June 1999 report, another physician reports that Mr. Perez stated the pain had been present since 1996. The record does not show a diagnosis of carpal tunnel syndrome until March 9, 1999, the date of the incident which is the subject of this lawsuit. Prior to this date, Mr. Perez's medical progress notes indicate that examining physicians believed his reported pain may be caused by carpal tunnel syndrome or by tendinitis.

During his period of incarceration, Mr. Perez has frequently visited physicians with an array of complaints apart from pain in his wrists. Between May 1998 and March 1999, Mr. Perez was seen by outside physicians on thirteen occasions in response to complaints of abdominal pain, back pain, neck pain, blurry vision and scalp inflammation.<sup>2</sup>

Plaintiff has been able to engage in employment. Prior to his incarceration, plaintiff worked as a jackhammer operator and as a cook. Plaintiff worked thirty hours each week in prison, first as a cook and then as a maintenance worker. On August 24, 1999, a doctor restricted plaintiff to lifting fifteen pounds and from repetitive wrist movements. Plaintiff then worked twenty minutes per day as a janitor.<sup>3</sup>

On September 11, 1998, a physician at the infirmary prescribed that Mr. Perez wear splints on his wrists for three weeks. On October 1, 1998, the physician again prescribed wrist splints and also prescribed 325 mg. of Tylenol.<sup>4</sup>

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<sup>2</sup> On January 13, 1999, Mr. Perez was also referred to a psychologist. The referring physician listed as grounds for the referral multiple complaints, manipulative behavior and threats to sue the health professionals.

<sup>3</sup> Although the medical restriction was lifted on April 28, 2000, plaintiff continues to work only twenty minutes each day.

<sup>4</sup> From the progress reports, it appears the plaintiff regularly received Tylenol thereafter.

On December 3, 1998, plaintiff was transported to Norristown to see Dr. Norman B. Stempler, an orthopedic surgeon. After examination, Dr. Stempler concluded that plaintiff most likely suffered from carpal tunnel syndrome. He recommended injecting the right carpal tunnel with Marcaine and Depromedrol and the continued use of the wrist splints. Should the symptoms in the right carpal tunnel subside, the doctor left open the possibility of injecting plaintiff's left carpal tunnel in two to three weeks. A follow-up visit was scheduled for January 11, 1999 and later postponed to March 9, 1999.

It appears from a medical report of February 8, 1999 that plaintiff's wrist splints disappeared and new wrist splints were ordered. The splints arrived on March 12, 1999.

On the morning of March 9, 1999, defendant Young came to plaintiff's housing block and escorted him to a holding area for transport to Dr. Stempler's office.<sup>5</sup> Plaintiff told officer Young that he needed to get wrist splints but was told they did

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<sup>5</sup> According to plaintiff, he arrived at the holding area at 9 a.m., left one and a half hours later for Norristown, the trip was an hour each way and he waited a half hour to see Dr. Stempler. Although this would be four hours, plaintiff also states that he returned to the prison by 11:30 a.m. According to the log book for the prison block in which plaintiff was housed, he arrived at the holding area at 11:30 a.m. and left at 11:52 a.m. The log book indicates that the transport returned at 1:55 p.m. Dr. Stempler's consultation record shows the appointment was at 12:45 p.m.

not have time.<sup>6</sup> According to the plaintiff, he never had a problem with officer Young during any prior interactions.

Officer Young placed metal hand-cuffs and a "black box" on plaintiff's wrists.<sup>7</sup> Plaintiff told officer Young that because of wrist problems, he was not supposed to wear metal hand-cuffs or a black box on his wrists. Officer Young stated that he was required to put them on. Under prison regulations, it is standard procedure that transporting officers put metal hand-cuffs and black boxes on inmates when they are being transported. Medical exceptions can be made. In such case, a medical note is provided to the transporting officer or he is verbally informed by medical personnel or through a lieutenant or captain. It is uncontroverted that no such medical note or verbal order was ever conveyed to the defendant officers.

When officer Jackson arrived, the plaintiff complained about the metal hand-cuffs. Plaintiff had no prior interaction with officer Jackson. Despite the absence of any medical exception, officer Jackson ordered that the metal hand-cuffs and

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<sup>6</sup> As noted, the medical records document that plaintiff did not have any splints to get until March 12, 1999.

<sup>7</sup> A black box is normally used for security purposes when transporting inmates. It prevents the inmate from picking the lock on the hand-cuffs.

black box be removed and replaced with nylon hand-cuffs.<sup>8</sup> Mr. Perez was then transported to Dr. Stempler's office by defendants. Mid-way to Dr. Stempler's office, plaintiff complained that the nylon hand-cuffs were hurting his hands. The officers did not respond to this complaint.

Upon arriving at the office, plaintiff complained twice more of pain while yelling and cursing at the officers. The officers informed plaintiff that the hand-cuffs could not be removed because they did not have the necessary tool to do so and did not have another set of hand-cuffs for the return trip. The officers also warned plaintiff that if he did not cease yelling and cursing, he would receive a misconduct upon return to the correctional institution.

After a half hour plaintiff was seen by Dr. Stempler. Plaintiff complained that his wrists hurt him. The doctor asked if the hand-cuffs could be removed. The officers indicated that they could not. The doctor examined plaintiff's hands and wrists and prepared a report.<sup>9</sup>

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<sup>8</sup> Nylon hand-cuffs, also known as plastic hand-cuffs or flex cuffs, are thin nylon straps that contain locking notches which allow for adjustment of the straps to accommodate the inmate's wrists. Once the notch is put through a small hole, it locks and cannot be loosened. The only way that plastic hand-cuffs can be removed is by being cut off with a tool made for this purpose.

<sup>9</sup> In the report, the doctor does not mention any swelling or pain. He did direct that wrist splints be worn every night.

On the return trip to SCI Chester, the officers stopped to use an ATM machine. Plaintiff estimates the stop lasted twenty minutes. Plaintiff did not make any complaints about pain on the return trip.

Upon arriving at SCI Chester, officer Young immediately cut off plaintiff's hand-cuffs and took him to the medical department.<sup>10</sup> According to the report of an examining nurse, plaintiff's wrists had abrasions but he was experiencing no motor weakness in any fingers or the small muscle of either hand. There was no discoloration of the hands. Plaintiff was given Tylenol and returned to his cell. He returned to the infirmary two days later and was given ice to place on a swelled area after which the swelling went away.

#### **IV. Discussion**

The unnecessary and wanton infliction of pain constitutes cruel and unusual punishment in violation of the Eighth Amendment. See Whitley v. Albers, 475 U.S. 312, 319 (1986). To sustain an Eighth Amendment claim, a plaintiff must show that the defendant acted with a sufficiently culpable state of mind and that the alleged wrongdoing was sufficiently serious to establish a constitutional violation. See Wilson v. Seiter, 501 U.S. 294, 297 (1991).

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<sup>10</sup> Taking an inmate to the medical department after transport outside the institution is a required procedure.



When prison officials stand accused of using excessive physical force, the focus is on whether the force was applied in a good-faith effort to maintain security or discipline or maliciously and sadistically to cause harm. See Hudson v. McMillan, 503 U.S. 1, 6-7 (1992). Id. at 6-7. Factors considered in making this determination include the extent of injury suffered by the inmate, the threat reasonably perceived by the responsible officers, the need for the application of force, the relationship between the need and the force used and any attempt to realistically avert the use of force.

Not all tortious conduct which occurs in prison rises to the level of an Eighth Amendment violation. See Howell v. Cataldi, 464 F.2d 272, 277 (3d Cir. 1972). "Not every push or shove, even if it may later seem unnecessary in the peace of the judge's chambers, violates a prisoner's constitutional rights." Johnson v. Glick, 481 F.2d 1028, 1033 (2d Cir.), cert. denied, 414 U.S. 1033 (1973). There is no Eighth Amendment violation with a de minimus use of physical force provided it is not of a type "repugnant to the conscience of mankind." Hudson, 503 U.S. at 9-10.

When prison officials maliciously and sadistically use force to cause harm, contemporary standards of decency always are violated whether or not significant injury results. See id. at 9; Brooks v. Kyler, 204 F.3d 102, 108 (3d Cir. 2000). The "use

of wanton, unnecessary force resulting in severe pain" is actionable. Id. at 109.

The extent of plaintiff's injury was minimal. Plaintiff frequently experienced wrist pain without regard to the use of hand-cuffs. The medical report prepared upon plaintiff's return notes abrasions on his wrists but indicates no motor weakness, swelling or discoloration. Plaintiff was prescribed Tylenol as he routinely was during prior visits. Dr. Stempler did not note any injury to plaintiff's wrists.

The need to apply restraints was substantial. Prison regulations require that inmates being transported be restrained. The transport of prisoners outside of a correctional institution poses obvious security risks which clearly justify the use of hand-cuffs or other appropriate restraints. See, e.g., Fulford v. King, 692 F.2d 11, 13-14 (5th Cir. 1982).

The relationship between the need for restraint and that employed was entirely proportionate.<sup>11</sup> Had the hand-cuffs been removed, the defendants would not have had any way of restraining plaintiff's hands until they returned to the prison.

Although plaintiff did not have a medical exception from the standard metal hand-cuffs and black box restraint,

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<sup>11</sup> Accepting that defendants prolonged the trip slightly by using an ATM, such a relatively brief stop on the return ride during which plaintiff had not complained of pain does not materially alter this assessment.

officer Jackson nevertheless permitted plastic hand-cuffs to be used. Although plaintiff suggests that defendants could have used some sort of less painful restraining device, there is no competent evidence of record that such a device presently exists, let alone was available to defendants. Defendants promptly removed the plastic hand-cuffs upon return to SCI Chester.

#### **V. Conclusion**

From the competent evidence of record, taken in the light most favorable to plaintiff, one cannot reasonably find or infer the wanton infliction of pain. The type and duration of restraint was clearly that which was reasonably required and was not excessive.

Accordingly, defendants' motion will be granted. An appropriate order will be entered.

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O R D E R

AND NOW, this                      day of November, 2001, upon consideration of defendants' Motion for Summary Judgment (Doc. #18 at civil action no. 99-2876) and in the absence of any response thereto, consistent with the accompanying memorandum, **IT IS HEREBY ORDERED** that said Motion is **GRANTED** and accordingly **JUDGMENT is ENTERED** in the above consolidated actions for the defendants.

BY THE COURT:

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JAY C. WALDMAN, J.